

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

OSCAR BECK,

Plaintiff,

Case No. 1:08-cv-1001

v.

HON. JANET T. NEFF

DAVID FORD, et al.,

Defendants.

/

**OPINION AND ORDER**

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff alleges that Defendants discriminated against him when the Defendants did not send his personal mail to his family but threw it away. Defendants filed a “Motion for Summary Judgment, or Alternatively, for Judgment as a Matter of Law” (Dkt 17). On December 29, 2009, the Magistrate Judge issued a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) recommending that Defendants’ motion be granted and Plaintiff’s action be dismissed without prejudice because Plaintiff failed to exhaust his administrative remedies (Dkt 24). The matter is presently before the Court on Plaintiff’s objection to the Report and Recommendation. Within the objection, Plaintiff also requests that this Court appoint him counsel. The Court denies the objection, denies the request for counsel, and issues this Opinion and Order.

In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo review of those portions of the Report and Recommendation to which Plaintiff makes his objection. Plaintiff objects to “the granting of Defendant’s Ford and Smoker [sic] action to dismissed [sic] without prejudice,” asserting that Defendants’ “storys [sic] ... changed ... two time already” and “there [sic] story as to what happen to my things this is not true” (Dkt 25).

Plaintiff's general disagreement with the Magistrate Judge's legal conclusion does not indicate that the Magistrate Judge's legal conclusion is incorrect. To the extent Plaintiff also makes a factual objection, the objection is irrelevant to the Magistrate Judge's exhaustion-of-remedies analysis.

Plaintiff also requests that this Court appoint him counsel to assist with the instant case (Dkt 25 at 1). However, there are no exceptional circumstances that would warrant the appointment of counsel in this case. *See Lavado v. Keohane*, 992 F.2d 601, 604-06 (6th Cir. 1993).

For these reasons and because Plaintiff is proceeding *in forma pauperis*, this Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997). A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58.

Accordingly:

**IT IS HEREBY ORDERED** that the objection (Dkt 25) is DENIED and the Report and Recommendation (Dkt 24) is APPROVED and ADOPTED as the Opinion of the Court.

**IT IS FURTHER ORDERED** that Defendants' "Motion for Summary Judgment, or Alternatively, for Judgment as a Matter of Law" (Dkt 17) is GRANTED for the reasons stated in the Report and Recommendation.

**IT IS FURTHER ORDERED** that Plaintiff's Motion to Appoint Counsel is DENIED.

**IT IS FURTHER ORDERED** that the Court certifies pursuant to 28 U.S.C. § 1915(a) that an appeal of the Judgment would not be taken in good faith.

DATED: March 10, 2010

/s/ Janet T. Neff  
JANET T. NEFF  
United States District Judge